IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 143 OF 1996

The State of Maharashtra (Through the Special Land Acquisition Officer, Sindhudurg at Kudal	]] APPELLANT]	
Vs.		
Shri Jaysingh Dattaram Satam Aged about 59 years, Occ.: Agricultural & Pensioner R/o : Oras (Sawantwada), now residing at A-5 Ramdarshan Subhash Road, Vile Parle (East) Mumbai - 400 057.	]]] RESPONDENT]	

Mr. B.H. Mehta for Appellant.
None for Respondent

CORAM : A.S. OKA, J.
DATE : 7TH DECEMBER, 2007

JUDGMENT :

1) Yesterday this appeal was called out for final hearing. I have heard the submissions of learned A.G.P. for the Appellant. As the learned Advocate appearing for the Respondent was absent, the Appeal was adjourned till today, with a view to give an opportunity for the Advocate appearing for the Respondent to appear and argue the Appeal. However, today when the appeal is called out, Advocate for the Respondent is absent.

2) The Appellant- State of Maharashtra has taken an exception to the Judgment and Award dated 22nd March 1995 passed by the learned Joint Civil Judge, Senior Division, Ratnagiri, by which the reference made at the instance of the Respondent under Section 18 of The Land Acquisition Act, 1894 (hereinafter referred to as "the said Act) has been allowed.

3) The acquisition relates to the lands which are more particularly set out in Paragraph No.2 of the impugned Judgment. The acquired lands are situate at village Oras, Taluka Kudal, District Sindhudurg. A Notification under Section 4 of the said Act was issued on 1st June 1989 by which the said lands were notified for acquisition for public purpose of setting up head quarter of Sindhudurg District at village Oras. An Award under Section 11 of the said Act was made out on 30th March 1991. The Land Acquisition Officer divided the lands into three different categories depending upon its revenue assessment and offered market value at three different rates i.e. Rs.110/- per guntha, Rs.165/- per guntha and Rs.220/- per are. The Respondent- claimant did not accept the Award and made an application under Section 18 of the said Act for reference. The Reference Court has come to the conclusion that the Respondent is entitled to

enhanced the market value at the rate of Rs.1,000/- per are. The Reference Court also granted statutory benefits to the Respondent.

4) The learned A.G.P. appearing for the Appellant- State Government submitted that no evidence was led to show that the sale instances which were relied upon by the Respondent in respect of the lands which were comparable to the acquired lands. He submitted that there was no material on record to grant enhancement in the compensation. He has invited my attention to the oral as well as documentary evidence on record. He submitted that the impugned Award deserves to be quashed and set aside.

5) I have given careful consideration to the submissions made by the learned A.G.P. I have also perused the record and proceedings of the Reference Court. The Respondent- claimant relied upon three sale instances in the form of certified copies of Index-II in respect of the said sale transactions. The said certified copies have been exhibited and marked as Exhibit 32, 33 and 34 by virtue of provisions of Section 51(A) of the said Act. In the present case, the material date is 1st June 1989 and market value as of that date has to be considered. The sale instance is at Exhibit 32 is

in respect of land bearing Survey No. 123/25 admeasuring 6 are. The date of the transaction is 27th February 1986. Exhibit 33 is the sale transaction of another land from the village Oras of 7th April 1987 and Exhibit 34 is in respect of another sale transaction in respect of the same village which is dated 28th August 1989. The Respondent examined himself as a witness. The only other witness examined by the Respondent is one Chandrakant Gosavi. I have perused the evidence of Respondent- claimant. He has not deposed in his evidence as regards the location and situation of the lands which are subject matter of sale instances at Exhibit 32, 33 and 34. He has only deposed about the crop which he was getting from the acquired lands. The second witness examined by the Respondent was working as an employee of the Respondent. He has also deposed about the crops taken on the acquired lands and income from the crops.

6) A claimant in a reference under Section 18 of the said Act is in a position of a plaintiff in a Civil Suit. The burden is on the claimant to establish that the compensation offered by the Award under Section 11 is inadequate. The burden is on the claimant to lead evidence and to prove as to what was the market value of the acquired land

on the relevant date.

7) The certified copies of Index-II have been admitted in evidence by virtue of Section 51-A of the said Act. The claimant has led no evidence whatsoever about the comparability of the lands subject matter of the three sale instances. In the case of Ranvir Singh and another Vs. Union of India (2005 12 SC Cases Page 59), the Apex Court after considering the provisions of Section 51-A of the said Act has held that burden of proof to show that the acquired land and the lands covered by sale instances were similar or were having the same potentialities or having similar advantageous features is always on the claimants". Perusal of the notes of evidence in the present case shows that the claimant has made no attempt to discharge the said burden. The Respondent claimant has only deposed regarding the income received by him from the crop taken on the acquired lands. It must be stated here that the Respondent has not sought compensation by relying upon profit capitalisation method. Apart from this fact, there is no cogent evidence of the income received by the Respondent.

8) Without there being any evidence on record, the learned trial Judge in Paragraph No. 8 of his Judgment has observed that "compensation offered

for potkharaba land was indequate". In Paragraph No. 9, the learned Judge has referred two sale instances which are referred to by the Special Land Acquisition Officer in the Award made under Section 11 of The said Act. Perusal of the record shows that none of the sale instances which are referred to in the Award under Section 11 of the said Act were produced and proved before the Court. The learned trial Judge has relied upon Sale Deed dated 27th February 1986 referered to in the Award under Section 11 and on the basis of said sale deed, he has come to the conclusion that the market value was Rs.1,000/- per are. Certified copy of the sale deed is not produced on record by the Respondent or even by the Appellant. Moreover, there is no evidence whatsoever to show that the land subject matter of the said sale deed was comparable to the acquired lands. Therefore, the fixation of the market value by the learned trial Judge is completely erroneous and contrary to the well settled principles of law.

9) Perusal of the record and in particular notes of evidence shows that the Respondent has not at all discharged the burden on him to prove that the compensation awarded by the Special Land Acquisition Officer was inadequate. In this view of the matter, appeal must succeed and I pass the

following order :

O R D E R

(I) The impugned Judgment and Award dated 22nd March 1995 is hereby set aside.

(II) Land Acquisition Reference No. 2 of 1992 stands dismissed.

(III) Appeal is accordingly allowed with no order as to costs through out.

(A.S. OKA, J.)